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The Rights of the Seneca Indians in N.Y.
to Their Lands · 1872

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A

BRIEF STATEMENT OF THE RIGHTS

OF THE

SENECA INDIANS

IN THE

STATE OF NEW YORK

TO THEIR LANDS IN THAT STATE,

WITH

Decisions relative thereto by the State and United States Courts,

AND

EXTRACTS FROM UNITED STATES LAWS, &c.

ALSO,

Drafts of a proposed Memorial to Congress, and a Bill to enable them to Lease and Divide their Lands.

PHILADELPHIA:
W. H. PILE, PRINTER, 422 WALNUT STREET.
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PREFACE.

THE principal design of the Committee of the Society of Friends in preparing the annexed statement, is to show the Seneca Indians in the State of New York, the character of the title to the lands they occupy under the decisions of the Courts of the United States, and the Courts of the State of New York. It is known to them that the Government considers all Indians its wards, and as such, under its special protection and oversight. It has charge of their funds, and the annuities they are entitled to are annually paid to them by its officers appointed for the purpose.

The history of the origin of the right which certain citizens of the United States have to extinguish, by purchase, the title of the Seneca Indians to their reservations, *when they are willing to sell them*, has been derived from authentic sources, and is printed, with the legal decisions respecting it, in order to give them a clear understanding of that right. It appears from the decisions of the Courts, as well as the articles of the treaty of 1794, quoted therein, that the Indian occupants cannot be deprived of their lands without their consent. They are "*to remain theirs until they choose to sell them*," and they are not subject to taxation of any kind. The extracts from laws and decisions of courts, which are added, contain information respecting their rights, which should also be understood.

The draft of a Memorial, and the Act which it is proposed Congress shall be requested to pass, are also printed, in order to give an opportunity for all interested in the latter, to examine and carefully consider, before they are presented for the action of that body.

Philadelphia, Eighth month 14*th*, 1872.

Brief Statement, &c.

THE RIGHT OF THE INDIANS TO THE LANDS THEY OCCUPY, AND THE CHARACTER OF THE TITLE BY WHICH THEY HOLD THEM.

On the discovery of this continent the Europeans were eager to appropriate as much of it for their own use as they could acquire. While they respected the right of the natives, as occupants, they asserted the ultimate right to be in themselves. As a consequence, the Indians, the natives, were deemed to have had only the usufruct or possessory title. The ultimate fee was claimed to be in the sovereign whose subjects discovered the country. In accordance with that principle, grants were made by Great Britain to its colonies in America. By the treaty which concluded the war of our revolution, Great Britain relinquished all claim, not only to the government, but to the proprietary and territorial rights which it had acquired in the limits of the United States. By this treaty, the powers of government, and the right to the soil which had previously been in Great Britain passed definitely to the United States. United States Statutes at Large, vol. 7, page 1 to 11.

Chancellor Kent in his Commentaries, vol. 1, page 280, says: "The title of the European nations, and which passed to the United States, to this immense territorial empire was founded on discovery and conquest, and by the European customary law of nations, prior discovery gave the title to the soil, subject to the possessory right of the natives, and which occupancy was all the right that European conquerors and discoverers, and which the United States as

succeeding to their title, would admit to reside in the native Indians. The principle is, that the Indians are to be considered merely as occupants, to be protected while in peace in the possession of their lands; but to be deemed incapable of transferring the absolute title to any other than the sovereign of the country." "The Constitution gives to Congress the power to dispose of and to make all needful rules and regulations respecting the territory or other property belonging to the United States, and to admit new States into the Union."

In the case of the *Cherokee Nation* vs. *The State of Georgia*, in the Supreme Court of the United States, it was decided that "Indians have rights of occupancy to their lands *as sacred as the fee simple, absolute title of the whites*, but they are only rights of occupancy, incapable of alienation or being held by any other than common right without permission from the government." 8 Wheaton, page 592.

"The nature of the Indian title to land on this continent, throughout its whole extent," it is said, "was most ably and elaborately considered in the case of *Johnson* vs. *McIntosh*, leading to conclusions satisfactory to every jurist, clearly establishing that from the time of discovery under the royal government, the Colonies, the States, the Confederacy and this Union, their tenure was occupancy, their rights occupancy and nothing more; that the ultimate absolute fee, jurisdiction and sovereignty was in the government, subject only to such rights—that grants vested soil and dominion and the powers of government, whether the land granted was vacant or occupied by Indians." 8 Wheaton, pages 543, 571. In *Goodell* vs. *Jackson*, 20 Johnson, New York Reports, page 694, the Chancellor said: "In my view of the subject they, the Indians, have never been regarded as citizens or members of our body politic within the contemplation of the Constitution. They have always been, and are still considered by our law as dependent tribes, governed by their own usages and chiefs, but placed under our protection and subject to our coercion, so far as the public safety required it, and no further."

The origin of the pre-emption right to the Cattaraugus and Allegheny reservations, now held by the Ogden Land Company.

Soon after peace was declared in 1783, a controversy arose between the States of Massachusetts and New York respecting the title to the western part of the latter State, comprising what was called the Genesee country. Massachusetts claimed this territory under the grant of King James the 1st to the Plymouth Company. New York claimed it under the grant of Charles the 2nd, to the Duke of York, in 1663. The controversy was brought under the cognizance of Congress in pursuance of the articles of confederation, and a court was instituted to decide it, but the dispute was finally settled by a convention between the two States, concluded at Hartford, Connecticut, on the 16th of the 12th month, 1786. It was agreed by the convention that New York should have the right of government and jurisdiction, and Massachusetts the right of property in the disputed territory, which right was mutually granted and released by each State to the other by an agreement signed by ten commissioners, four of whom were appointed by Massachusetts and six by New York.*

By virtue of this agreement two tracts were ceded to Massachusetts; one tract comprehended all that part of the State lying west of a line drawn through Great Sodus Bay on the south side of Lake Ontario, and running thence southerly to the northerly boundary of Pennsylvania, except a strip one mile wide on the east side of the river Niagara, and the islands in that stream. Its length on the south side was about 140 miles, and on the north about 100 miles. Its breadth on the east from Lake Ontario to Pennsylvania was about 87 miles. The breadth was nearly uniform westwardly as far as Niagara river, and the northeasterly extremity of Lake Erie. This tract was estimated to contain about 6,144,000 acres. The whole tract was formerly called Genesee. The other tract, called the Boston Ten Towns contained 230,400 acres, and is

* See Journal of Congress, edition of 1823, vol. 4, page 787.

situated between Chenango river and Owego creek, being in the counties of Broome and Tioga. The area of these cessions is said to have been nearly one-fourth of that of the State. By the first article of the agreement or compact, the Commonwealth of Massachusetts ceded to the State of New York all her claim, right and title to the government, sovereignty and jurisdiction of the lands and territories therein particularly specified, which included the two tracts of land now occupied by the Seneca nation of Indians as well as several other reservations which have since been disposed of. By the 2nd article, New York "ceded, granted, released, and confirmed to Massachusetts, and to the use of the Commonwealth, their grantees and the heirs and assigns of such grantees forever, the *right of pre-emption of the soil* from the native Indians, and all other the estate, right, title and property (the right and title of government, sovereignty and jurisdiction excepted) which the State of New York hath of and in or to *the described lands.*" By the 3rd article Massachusetts "ceded, granted, released and confirmed to the State of New York and their grantees and the heirs and assigns of such grantees forever, the right of pre-emption of the soil from the native Indians, and all other the estate, right, title and property which the Commonwealth of Massachusetts hath of in or to *the residue of the lands and territory* so claimed by the State of New York as herein before stated and particularly specified." The 10th article is as follows: "The Commonwealth of Massachusetts *may grant the right of pre-emption* of the whole or any part of the said lands and territories to any person or persons, who by virtue of such grant shall have good right to extinguish by purchase the claims of the native Indians. Provided, however, that no purchase from the native Indians by any such grantee shall be valid, unless the same shall be made in the presence of and approved by a superintendent to be appointed for such purpose by the Commonwealth of Massachusetts, and having no interest in such purchase, and unless such purchase shall be confirmed by the Commonwealth of Massachusetts." The convention authorized Massachusetts to hold treaties with the native Indians

relative to the property, or right of soil of the lands and territory thereby ceded to her. It was also agreed "that the lands so ceded, granted, released and confirmed to the Commonwealth of Massachusetts, or such part thereof as shall from time to time be and remain the property of the Commonwealth of Massachusetts, shall during the time that the same shall so be and remain such property, be free and exempt from all taxes whatsoever, and that no general or State tax shall be charged on or collected from the lands thereafter to be granted by the Commonwealth of Massachusetts, or on the occupants or proprietors of such lands, until fifteen years after such confirmation as is hereinafter mentioned of such grants shall have expired, but that the lands so to be granted, and the occupants thereof shall, during the said period, be subject to town and county charges or taxes only." There is a provision also, that copies of the grants and of the acts of confirmation should be deposited in the office of the Secretary of the State of New York, and be recorded there without any charges or fees of office whatsoever, and a failure to have them so recorded is to render them void.

Masssachusetts sold the large tract, estimated to contain 6,144,000 acres, to Oliver Phelps and Nathaniel Gorham in 1788, for $1,000,000, payable in a kind of scrip called consolidated securities, then much below par; and the other to John Brown for $3,300.* Phelps and Gorham failed to comply with their contract for the whole of the large tract in consequence of the value of the scrip rising to par, and that which they failed to pay for was subsequently granted to Robert Morris in 1791.† The Holland Land Company acquired their title to the tract of land called the Holland purchase within the limits of which are the Allegheny and Cattaraugus reservations, from Robert Morris. At the time of the convention between New York and Massachusetts, in the 12th

*McCauley's History of New York and New York Gazeteer.

†A statement in the New York Gazeteer, page 52, of the subdivision of the land ceded by Massachusetts, makes the aggregate 7,615,970 acres. The Holland Land Company are said to have become the purchasers of 3,600,000 acres.

month, 1786, the Seneca Indians, one of the tribes of the Six Nations, claimed the exclusive right to the lands whereof the pre-emption was ceded to Massachusetts. The Mohawks having removed to Canada, and the lands occupied by the Onondagas, Oneidas, Cayugas, and other tribes of the Six Nations not being included in the cession made by Massachusetts, the right of the pre-emption as to the lands of these latter designated tribes remained in the State of New York, and Massachusetts, in the 3rd article of the agreement, as before mentioned, relinquished all right, title and claim thereto.

The treaty between the United States and the Six Nations, concluded "November 11th, 1794," see United States Statutes at Large, vol. 7, page 44, contains the following clause :

"Article 2nd. The United States acknowledge the lands reserved to the Oneida, Onondaga and Cayuga nations in their respective treaties with the State of New York to be their property ; and the United States will never claim the same nor disturb them or either of the Six Nations, nor their Indian friends residing thereon, and united with them in the free use and enjoyment thereof, but the said reservations shall remain theirs until they choose to sell the same to the people of the United States who have the right to purchase."

The 3rd article of that treaty after specifying the boundaries of the lands of the Seneca Indians contains the following stipulations, viz : "Now the United States acknowledge all the land within the above mentioned boundaries to be the property of the Seneca nation, and the United States will never claim the same nor disturb the Seneca nation, nor any of the Six Nations or of their Indian friends residing thereon and united with them in the free use and enjoyment thereof, but it shall remain theirs until they choose to sell the same to the people of the United States who have the right to purchase."

In vol. 7, United States Statutes at Large, pages 601–603, will be found the contract entered into under the sanction of the United States between Robert Morris and the Seneca nation of Indians "September 15th, 1797," for the extin-

guishment of the Indian title, in which the tracts then and previously sold by them to the assignees of the State of Massachusetts were indicated, leaving nine small reservations undisposed of so far as the native right was involved.*

The Holland Land Company, by deed dated "September 12th, 1810," sold and conveyed to David A. Ogden their right of pre-emption to six of the tracts reserved to the Seneca Indians by the above treaty of 1797, including the Allegheny and Cattaraugus reservations, in all, 197,835 acres, for fifty cents per acre. D. A. Ogden afterwards sold the right he had thus acquired, in shares to different individuals, he holding the legal title as trustee for all the parties interested. He subsequently resigned the trust, and the legal title was transferred to Thos. Ludlow Ogden, of the city of New York, and Joseph Fellows of Geneva, on behalf of all the associates. The capital of the Ogden Land Company is now represented by twenty shares, fifteen of which belong to estates, three to individuals, and two are held in trust.

DECISIONS OF THE SUPREME COURT OF NEW YORK AND THE COURT OF ERRORS IN REFERENCE TO THE PRE-EMPTION RIGHT TO THE LANDS BELONGING TO THE SENECA INDIANS, &C.

In *Ogden* vs. *Lee*, New York Reports, 6 Hill, page 546, in 1844, the Supreme Court held that "the Seneca Nation of Indians have never parted with the title to the lands on which the timber was cut. Their right is as perfect now as it was when the first European landed on this continent, with the single exception that they cannot sell without the consent of the government. The right of occupancy to them and their heirs forever, remains wholly unimpaired. They are not ten-

* The Indians sold to Phelps and Gorham 2,225,000 acres of land for a merely "nominal" consideration. For all the rest of the large territory purchased by Robert Morris they got but 100,000 dollars, probably not receiving altogether over three cents an acre for it.

ants of the State nor of its grantees. They hold under their own original title. The plaintiffs have acquired nothing *but the right to purchase whenever the owner may choose to sell.* In the meanwhile, or until the tribe shall become extinct, the Seneca Indians will remain the rightful lords of the soil. They have cut and sold their own timber, and I see no principle upon which the plaintiffs can have action either against them or their vendees."

In *Fellows* vs. *Lee*, see 5 Denio's Reports, p. 628, the New York Court of Errors, in 1846, unanimously confirmed the decision in the above case, twenty Senators being present. "Senators Barlow, Porter, Putnam and Spencer delivered written opinions in favor of affirming the judgment, upon the ground maintained by the Supreme Court that the Indian title to land is an absolute fee, and that the pre-emption right ceded to Massachusetts was simply a right to acquire by purchase from the Indians their ownership of the soil whenever they choose to sell it."

Strong and Gordon, chiefs of the Seneca Nation of Indian vs. *Waterman*, 11 Paige, 607. This was an action to dissolve an injunction granted by the vice-chancellor of the 8th Circuit, restraining the defendant from committing trespasses and waste upon the Indian lands of the Cattaraugus Reservation, or interfering with the possession of the Indians residing on such Reservation. The opinion was given in 1845. The chancellor said, "The rights of the Indians in this State to the use, possession and occupancy of the lands of their respective reservations, which have not been by them voluntarily ceded to the people of the State or granted to individuals with the assent of the State, *do not at this time admit of a doubt.* The ultimate fee of the land is undoubtedly in the State or its grantees, but the right of the Indians to the beneficial use and occupancy thereof, until they think proper voluntarily to relinquish and abandon that right, has been too long recognized in this State to be now called in question."

Wadsworth vs. *Buffalo Hydraulic Association*, 15 Barbour, p. 83, in 1853. Judge Marvin said, "The State possesses the power to appropriate to public use the lands of the Indians, notwithstanding the grant of the right of pre-emption to Massachusetts, and it has repeatedly exercised this right. In

1836, it passed a general law, authorizing rail road companies to contract with the Indians for the right to make roads upon their lands, but the fee to the land is not to vest in the company, &c., (Session Laws, 1836, 461.) A railroad has been constructed through the Allegheny reservation in Cattaraugus County. This is a portion of the land included in the grant of the pre-emption right to Massachusetts. Suppose the pre-emptors purchase this reservation from the Indians, will they have a right to eject the railroad company? or must they not take it subject to the rights of the railroad company; subject to the servitude imposed upon it by the authority of the Legislature and the contract of the Indians while they were owners? It seems to me that the right granted to Massachusetts in 1786, to purchase the lands of the Indians, was, and always has been, subject to the right of the State to take and appropriate for public use the lands to which the right of purchase attached, otherwise a portion of the territory of the State would be beyond its "right of sovereignty." When any of the lands of the Indians are taken for roads, railroads and canals, compensation is made to the Indians. They have not parted with their title to the pre-emptors, and may never do so. No compensation is made to the pre-emptors. It may be a matter of prudence to obtain their release or consent, but it seems to me it is not necessary, and when they purchase the land from the Indians, they take it subject to the servitudes or easement upon it."

Decisions of the Supreme Court of the United States in reference to the right of States to tax the lands of Indians, intrusions on Indian lands, &c.

In the case of the *New York Indians*, 5 Wallace, page 761, the court held, "Until the Indians have sold their lands and removed from them in pursuance of the treaty stipulations, they are to be regarded as still in their ancient possessions, and are in under their original rights, and entitled to the un-

disputed enjoyment of them." This was also the effect Judge Nelson said, of the decision in the case of *Fellows* vs. *Blacksmith*, 19 Howard, 366. The Judge further said: "*All* agree that the Indian right of occupancy creates an indefeasible title to the reservations, that may extend from generation to generation, and will cease only by the dissolution of the tribe, or their consent to the party possessed of the right of pre-emption."

In this case it was decided, that, "When Indians being in possession of lands, their ancient and native homes, the enjoyment of which, without disturbance by the United States, has been secured to them by treaty with the Federal Government, with the assurance that 'the lands shall remain theirs until they choose to sell them,' the State in which the lands lie has no power to tax them, either for ordinary town and county purposes, or for the special purpose of surveying them and opening roads through them."

The Legislature of the State of New York in 1857, passed a law, declaring thal "no tax shall hereafter be assessed or imposed on either of the Reservations or any part thereof, for any purpose whatever, so long as said Reservations remain the property of the Seneca Nation."

In another case, *Kansas Indians*, 5 Wallace, page 737, it is said: "Until they [the Indians,] are clothed with the rights, and bound to all the duties of citizens, they enjoy the privilege of total immunity from State taxation," again; "conferring rights and privileges on these Indians cannot affect their situation, which can only be changed by treaty stipulations, or a voluntary abandonment of their tribal organizations. As long as the United States recognizes their national character they are under the protection of treaties and the laws of Congress, and their property is withdrawn from the operation of State laws." In the same case the Judge remarked: "It is argued because the Indians seek the courts of Kansas for the preservation of rights, and the redress of wrongs, sometimes voluntarily, and in certain specified cases, by direction of the Secretary of the Interior, that they submit themselves to all the laws of the State. But the conduct of Indians is

not to be measured by the same standard which we apply to the conduct of other people. Kansas is not obliged to confer any right on them. Because a sound policy may dictate the wisdom of treating them in some respects as she treats her own citizens, and thereby weaning them from the ancient attachment to their own customs, they are none the less a separate people, under the protection of the general government. This policy may eventually succeed in disbanding the tribe, but until it does, the Indians cannot look to Kansas for protection, nor can the general laws of the State taxing real estate within its limits reach their property."

In an action under "An Act of the State of New York respecting intrusion on Indian lands," passed "March 31, 1821," brought by writ of error before the Supreme Court of the United States, Judge Grier says: "This act made it unlawful for any person other than Indians, to settle and reside upon lands belonging to or occupied by any tribe of Indians, and declared *void* all leases, contracts and agreements made by any Indians, whereby any other than Indians should be permitted to reside on such lands, and if any persons should settle or reside on any such lands, contrary to the act, it was made the duty of any judge of any county court where such lands were situated, on complaint made to him and due proof of such residence or settlement, to issue his warrant, directed to the sheriff commanding him to remove such persons."*

"The statute in question is a police regulation for the protection of the Indians from intrusion of the white people, and to preserve the peace. It is the dictate of a prudent and just policy. Notwithstanding the peculiar relation which these Indian nations hold to the Government of the United States, the State of New York had the power of a sovereign over their persons and property, so far as it was necessary to preserve the peace of the commonwealth, and protect these feeble and helpless bands from imposition and intrusion. The power of a State to make such regulations to preserve the peace of

* If persons removed from Indian land, returned to settle and reside thereon, they were liable upon conviction, under this act to imprisonment for thirty days.

the community is absolute, and has never been surrendered. The act is therefore not contrary to the Constitution of the United States. Nor is this statute in conflict with any act of Congress, as no law of Congress can be found which authorizes white men to intrude on the possession of Indians."

"We are of opinion, therefore, that this statute and the proceedings in this case are not in conflict with the treaty in question, or with any act of Congress, or with the Constitution of the United States." *State of New York* vs. *Dibble*, 21 Howard, p. 366.

The authority under which the State of New York and individual citizens of the United States entered into contracts or agreements for the extinction of the Indian title to land, will be found in the 4th section of an act to regulate trade and intercourse with the Indians, approved "22d July, 1790;" Statutes at Large, vol. 1, page 138, and section 8 of an act of similar title, approved "1st March, 1793." *Ib.* page 330.

The existing law, enacted in 1834, is as follows: "That no purchase, grant, lease or other conveyance of land, or of any title or claim thereto from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into, pursuant to the Constitution, and if any person not employed under the authority of the United States, shall attempt to negotiate such treaty or convention, directly or indirectly, to treat with any such nation or tribe of Indians, for the title or purchase of any lands by them held or claimed, such person shall forfeit and pay one thousand dollars. . *Provided, nevertheless*, That it shall be lawful for the agent or agents of any State who may be present at any treaty held with Indians under the authority of the United States, in the presence and with the approbation of the commissioner or commissioners of the United States, appointed to hold the same, to propose to adjust with the Indians the compensation to be made for their claim to lands within such State, which shall be extinguished by treaty. See United States Statutes at Large, vol. 4, page 730.

PROPOSED MEMORIAL.

To the Senate and House of Representatives of the United States of America, in Congress assembled.

We, the undersigned Counsellors, and a majority of the members of the Seneca Nation of Indians residing on the Allegheny and Cattaraugus Reservations, respectfully represent: That we are the descendants and representatives of a once powerful and numerous tribe of the aboriginal inhabitants of an extensive territory. A part of that territory is now in the limits of the State of New York; and all of it, except a very small portion, has passed from our control through the action of our forefathers, who, yielding to the solicitations of interested white men, parted with it for a merely nominal consideration. Of the large domain alluded to there now remain in our possession but about fifty thousand acres; equal at the present time to only 20 acres, more or less, for each person constituting our nation; some of which, being hilly and of poor quality, is not adapted for cultivation.

The Allegheny Reservation extending on both sides of the Allegheny river, is favorably located for railroads; two have been constructed through portions of it, and others are projected. Some years since, upon the application of the New York & Erie and the Atlantic & Great Western Rail Road companies the right of way was granted to them by our nation for a small compensation, and about fifty acres near the junction of the two roads, were leased for a term of 99 years to one of those companies for the erection of machine shops, depots, &c. A number of the employees of those companies and other white men, needing lots to build dwellings upon, a portion of our land was also leased to them. Some of the leases so made were renewed upon the expiration of the periods

for which they were granted. The Supreme Court of New York has recently decided that we, neither as a nation or a tribe, or as individuals, even under the authority of the State Legislature, have the power legally to let our lands. Thus all of the leases we have made have become thereby invalid and of no account in law. Having made said leases in good faith, and under the belief that as owners of the land we had the right to do so, and those we have leased to having made valuable improvements on it, particularly in the villages of Salamanca, Carrolton, and Great Valley, we are willing to make them, as our tenants, secure in the possession of the land they occupy, which they, the lessees, also desire may be done. For this purpose we need the authority to make leases which shall be deemed legal under the laws of the United States. While we are well aware of the evil influences which are exerted upon many of our people by having numerous settlements of white persons near us, yet the location of our land, and the circumstances which the progress of the improvements of the country have brought around us, seem to render it needful that a portion of it should be so occupied. In consideration of which we are induced to yield thereto, and therefore ask authority to make such leases as will render the parties who have been allowed to occupy our lands, as well as those who may be hereafter permitted to do the same, secure in the improvements they have made, and may make thereon as our tenants.

We have for many years given attention to the cultivation of our land from which we obtain our subsistence, and the possession of which we desire to retain for our own use and that of our children *forever*. We are convinced our improvement would be promoted if we held our land in severalty. If possessed of our several allotments, we believe we should be induced to cultivate and improve them with more diligence and care than is now done, or will be likely to be done as long as the land is held in joint tenure. We therefore respectfully ask that authority be given to appoint Commissioners who shall be empowered, as is set forth in the accompanying bill, to make partition and allotment among the members

of our nation of all that portion of our land which is not set apart for the general uses of the nation, as described in said bill, the provisions of which bill having been considered by us, we ask that it may become a law.

And we also respectfully ask that, in view of our inability to pay the expenses which will be necessarily incurred in the division and partition of our land among us as therein provided, you will appropriate a sufficient sum to pay therefor, and by so doing promote the advancement and improvement of our nation in the arts of civilized life, which we confidently anticipate will follow therefrom.

PROPOSED ACT TO AUTHORIZE THE SENECA INDIANS RESIDING ON THE ALLEGHENY AND CATTARAUGUS RESERVATIONS TO LEASE A PORTION OF THEIR LAND AND MAKE PARTITION OF THE REMAINDER.

Whereas, The Seneca Indians residing on their Allegheny and Cattaraugus reservations, in the State of New York, believing that they had a right to do so, have leased certain portions of their land to white settlers, and also to rail road corporations, which leases have been decided by the Supreme Court of the State of New York to be invalid. *And whereas*, the lessees of said land have made valuable improvements thereon, which, unless said leases are made legal, will be diminished in value, and the owners thereof be liable to suffer material loss; *and whereas*, most of the land so leased is at the junction of two important rail roads, on which extensive buildings for the use of those roads have been erected and occupied; *and whereas*, important advantages will result from said Indians having authority to divide their land, and hold it in severalty; *and whereas*, many of said lessees, as well as Counsellors and a majority of the members of the Seneca nation of Indians, have petitioned for the relief in this Act contained; therefore,

SEC. 1. Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled; That it shall be lawful for the Counsellors of the said Seneca Nation of Indians, duly elected by the lawful voters thereof, to lease their land in the villages of Salamanca, Great Valley, Carrolton, and Red House; also, to make new leases of such portions of their land in the said villages, which have been, and are now leased, either by individual Indians, or by authority of said Seneca Nation of Indians, or by both; also, their Oil Spring Reservation. Such new leases as may be made in lieu of the old ones, shall be for the unexpired time of the old leases respectively, and the rent to be paid, shall be that required by the old leases, with such sum added thereto as the Counsellors of the Nation shall determine, said addition to the rent however not to exceed the annual tax heretofore levied, and to be in lieu thereof, and no further taxes shall be assessed on said lessees during the term of their respective leases. In all leases a clause shall be inserted, stipulating for the renewal of them from time to time, to the original lessee or his assigns, at and from the expiration of the term of each respectively, and for a period not exceeding in any case twenty years. Such renewal to be made on such terms as may be agreed upon by the Counsellors of the nation for the time being and the lessee, and to be determined by the actual value of said land at the time of the renewal, irrespective of the buildings or improvements thereon. In case they fail to agree, then the terms of the new lease shall be determined by disinterested persons, one of whom shall be chosen by the Counsellors of the nation for the time being by ballot, and one by the lessee, and if the two thus chosen cannot agree, they shall select another to act with them, and the rent fixed by a majority of these shall be final; and in every case of the renewal of leases the rent which shall be required to be paid by any lessee for a new period, shall be fixed and determined as herein set forth. *Provided*, that the income from all the said leased land, wherever situated, shall be collected by an agent duly elected by said Counsellors annually, and paid over to the Treasurer of the nation, and shall be expended by order of the Coun-

sellors for the general purposes of said Seneca Nation, and for no other. *Provided*, also, that nothing herein contained shall make it lawful for any lessee to sell intoxicating drinks on the premises he may have leased, or render inoperative the laws of the United States or the State of New York prohibiting their sale on Indian land or to Indians, and it shall be a condition in each lease, that no intoxicating drinks shall be sold on the premises, and that such laws shall be observed, and that a violation of such conditions shall forfeit the lease.

SEC. 2. It shall be lawful for said Seneca Indians residing on the Allegheny and Cattaraugus Reservations, by a vote of two-thirds of their Counsellors, legally elected as aforesaid, to choose three competent disinterested men, citizens of the United States, as Commissioners, whose duty it shall be to make partition and allotment among all the members of said nation of Indians of every age who may be entitled thereto on the day of the month, 1873, of all the land belonging to said nation constituting their Allegheny and Cattaraugus Reservations, except that contained in the four villages herein before mentioned, the boundaries of which shall be determined by them, and also such portions as are now occupied for places of worship, school houses, asylums, grave yards, or for council or court houses, as they, the said three Commissioners, or a majority of them, may think just and equitable, having regard to the value of the land, *exclusive of the improvements*, and as far as practicable so as to include the improvements owned by each on the tract alloted to him or her, and they are authorized to lay out such roads as may be necessary to give access to said allotments. In cases where allotments to individuals cannot be satisfactorily made without including the improved land heretofore occupied by others, the amount to be paid to the party owning the improvement on the land included in such allotment, shall be fixed and determined by a majority of said Commissioners, and the amount so fixed shall be a lien upon the allotment until discharged or paid, with interest thereon, at the rate of six per cent. per annum. The said Commissioners upon agreeing on said allotments, shall cause the same to be surveyed and

each allotment designated by corner stones or stakes. They shall also cause a map thereof to be drawn, showing the metes and bounds of each of the shares or purparts, with the names of the respective parties to whom they were allotted distinctly marked thereon, also, a map of the villages, designating the lots leased and the occupants thereof. *Provided*, that the allotments of the members of each family shall be together as much as practicable, and the parents or parent having charge of the family shall have the right to control the portions belonging to their children as if the whole were theirs. Said control of the parents to their children's portions to continue however, only until they are 21 years of age, or they are regularly married, and no sale made by them or either of them, of any other than their own portions, shall be valid; neither shall any one under 21 years of age sell his or her allotment, nor shall the portion of any minor be sold except by order and confirmation of a court or body by law constituted for the purpose of acting on behalf of minors by the Seneca Nation of Indians.

SEC. 3. Upon said allotment and partition being made, and the map of the same being completed and explained to those who may call upon the Commissioners for the purpose of being informed thereon, they shall notify the Counsellors of the nation thereof; whereupon said Counsellors shall fix a day to take a vote on approving or disapproving of said division and allotment, and cause notices to be put up in the most public places on both Reservations at least thirty days before the time and place appointed for taking said vote. If upon counting the votes by officers appointed for the purpose, it should appear that two-thirds of the men and women over 21 years of age approve of the allotment and division of said land, as shown on said plan or map, the same shall be binding upon all members of said Seneca Nation, and the parties to whom the respective allotments shall be made, and their heirs and assigns, shall hold the same in severalty, as is hereinafter provided. If the division and allotment should not be approved by the requisite number, it shall be the duty of the Commissioners at an early day after the announcement thereof, to appoint a time to hear those who may be

dissatisfied, and make such changes in the allotments as may appear to them necessary and reasonable, giving notice thereof to the parties immediately interested. After said changes are made, information shall be given thereof to the Counsellors, who thereupon shall give notice and proceed to take another vote upon approving or disapproving, as heretofore provided, and the Commissioners are authorized to continue to make such changes as appear to them to be reasonable and proper until the approval of said two-thirds to the division is obtained, whereupon said map and the report of the Commissioners, with a certificate of the vote of approval, shall be placed on record in the office of the Recorder of Deeds in the Counties of Cattaraugus and Erie, in the State of New York, and said division and allotment shall be binding on all as aforesaid.

SEC. 4. In consideration of the inability of the said Seneca Nation of Indians to pay the expenses attendant upon the partition and survey of their land, herein provided for, and with a view to the encouragement of a proceeding so likely to promote their future welfare and advancement, the sum of ten thousand dollars, or so much thereof as may be necessary, are hereby appropriated to pay the expenses of said partition and survey and the drawing and printing of a map and report thereof.

SEC. 5. Those to whom such allotments shall be made, their or his or her heirs and assigns, are hereby authorized to occupy and enjoy the same as though he, she, or they were the owners thereof in fee simple, and until three-fourths of all the men and women over twenty-one years of age owning such allotments, and interested in said lands, shall signify by a vote taken after public notice of at least thirty days, that they are willing at a price per acre, to be inserted in said notice, to sell all said lands to the citizens of the United States, who hold the pre-emption right as assignees of the State of Massachusetts.

SEC. 6. After the division of said lands, the respective owners of the allotments aforesaid, may sell or convey or devise by will proven by two witnesses, their respective shares or any part or parts thereof to any member of the Seneca Nation of Indians, or any member of the Six Nations of Indians, who shall hold the granted lands subject to this Act;

but none of such lands shall be aliened or devised to others than members of the Seneca Nation of Indians, or of the Six Nations of Indians, without authority of Congress and the State of Massachusetts first had therefor; the latter acting by virtue of the compact made between that State and New York in 1786, and then only with the consent of the owners of the pre-emption right as assignees of said State of Massachusetts. It being hereby declared to be the intention of this Act, to encourage the improvement and settlement of said Indians in agricultural and other industrial pursuits, which many of them are anxious should be more attended to among them, and not to interfere in any way with any rights those citizens may have who are as assignees of Massachusetts, entitled to purchase the lands constituting the reservations herein authorized to be divided, when the Indian occupants may be willing to sell them, and a mutual agreement can be made for that purpose. *Provided*, said sale when made shall be subject to the leases made in conformity with this Act, and not to any other.

SEC. 7. It shall not be lawful after the partition and allotment herein authorized to the respective parties entitled to share in said land, for any holder of any portion of said land to lease or let for any period of time his or her portion thereof to any other than a member of the Seneca Nation of Indians, or of the Six Nations as aforesaid, without authority of Congress first had therefor.

SEC. 8. That the lessors in the name of the Counsellors of the Seneca Nation of Indians, shall have the right to maintain any action in any court of the State or United States for the recovery of arrears of rent, and the enforcement of the terms of the leases they may make in conformity with this Act.

SEC. 9. That any member of the Seneca Nation of Indians is hereby authorized to sell and dispose of his personal property and receive pay therefor in the same manner as any citizen of the State of New York, and maintain an action therefor in said State courts to the same extent as a citizen may; and any Indian in the occupancy of his land as aforesaid, is hereby authorized to maintain any action in the courts of said State, or the United States, that any citizen could for the recovery of his real and personal property, or for the re-

covery of any damage done to said property, or to recover the value of any personal property wrongfully taken from him.

SEC. 10. In case the owner of any allotment should die without leaving a will, the land he died seized of shall be inherited according to the intestate laws the Seneca Nation of Indians, may make for the division of such estates, and said Nation shall require all deeds of conveyance of land, all wills recognized by laws made in conformity to this Act, all plans of villages, and all leases of land, as well as all obligations of Indians which are liens on real estate, to be duly recorded in books to be provided at the expense of the nation, and by an officer appointed or elected as may be directed by law, and a copy of documents so recorded, certified by the proper officer to be correct, and attested by the seal of office, shall be legal evidence in any court of the State or the United States.

SEC. 11. The legal obligations of any Indian which may be liens on real estate upon default of payment, may be collected by sale of said real estate to any member of the Seneca Nation, or of the Six Nations, in such manner as may be provided by laws duly enacted by said Seneca Nation of Indians, and the title thereto, upon a sale in accordance with such law, shall pass to the purchaser as effectually as if voluntarily sold by the owner thereof.

SEC. 12. All laws regularly enacted according to the Constitution of the Seneca Nation of Indians, affecting in any way the owners of real estate, shall be binding on other Indians who may become purchasers of land in conformity with this Act on either of said reservations, or who may become residents thereon as tenants.

SEC. 13. At the time the annual census of the Nation is taken, under direction and by authority of the United States agent, for the purpose of distributing the annuities to which the Seneca Nation is entitled, it shall be the duty of the officer selected for that purpose to enroll the names, ages and sex of each individual so entitled, and he shall ascertain and make record of the time of the death of any member of the Nation deceased since the previous annual census; also the name and time of birth of any child or children of any member of the Seneca Nation born within the same period with the names of the parents, also the names and ages of any members of said Nation who may have been married during the same time, and

the date of the said marriage, and how and before whom said marriage was accomplished; all of which shall be duly recorded by the officer in books provided for the purpose, which books shall be placed in the custody of the Recorder of Deeds, Wills, &c., and be accessible to any member of said Seneca Nation under regulations fixed by law.

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